

REMARKS

The Applicants object to the Examiner's withdrawal of claims 2, 4-6, 9-13, 15-16, and 25-27 on the basis of there being no allowable generic or making claim.

The Applicants respectfully point out that there is only one independent claim, namely claim 1, which, if allowable, is linked to each and every one of the dependent claims including claims 2, 4-6, 9-13, 15-16, and 25-27. Withdrawal of these claims would require redundant addition of these claims depending upon the allowability of claim 1.

Accordingly, the Applicants respectfully request the Examiner do not withdraw claims 2, 4-6, 9-13, 15-16, and 25-27 but rather consider them as dependent claims.

The Examiner has also objected to the listing of the references in the specification is not a proper Information Disclosure Statement.

The Applicants submit that each of the references cited in the Application are also listed on the Information Disclosure Statement by the Applicant and signed by the Examiner, copy enclosed.

Thus, the Applicants request consideration thereof by the Examiner.

The Examiner has rejected claims 1, 3, 19, and 21-24 as being anticipated by U.S. 4,366,169 to White. In this rejection, the Examiner states that White teaches a substrate

and oxygen carrier wherein the carrier comprises a fluorocarbon compositions which are lipophilic of various polymeric compositions.

The Applicants submit that anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc. 221 USPQ 385 (Fed. Cir. 1984); In re Sun 31 USPQ 2d 1451 (CAFC 1993); Advanced Display Systems, Inc. v. Kent State University 54 USPQ 2d 1673 (CAFC 2000).

Further, the Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. Ex Parte Levy 17 USPQ 2d 1461 (USPTO Board of Patent Appeals and Interferences 1990).

In addition, the Applicants submit that anticipation must meet strict standards and unless all of the same elements are found in exactly the same situation and united in the same way to form identical function in a single prior art reference, there is no anticipation. Tights, Inc. v. Acme-McCary Corporation, et al. 191 USPQ 305 (CAFC 1976).

Bearing in mind this criteria, the Applicants submit that although White discloses the use of perfluorocarbons for wounds, White does not disclose the element of an oxygen source serving for oxygenating blood and tissue, as presently claimed in independent claim 1 and in all depending claims.

In contrast, White explicitly excludes the oxygenation of the blood system, see column 5, lines 45-52, and claim 1.

The substantially fluorinated carbon material taught by White has an ability to transport oxygen. However, it is not a delivery source of oxygen as presently claimed.

In view of the fact that there is no teaching in White of a delivery source of oxygen, all the elements of the presently claimed invention are not taught nor suggested in White. Accordingly, a rejection of the claims under 35 USC 102(b) is not sustainable and the Applicants respectfully request the Examiner to withdraw this rejection.

Claims 1, 3, 22, and 24 have been rejected by the Examiner under 35 USC 102(b) as being anticipated by U.S. 6,110,483 to Whitbourne, et al. The Examiner states that Whitbourne, et al. teaches a substrate and an oxygen carrier wherein the carrier comprises a fluorocarbon compositions which are lipophilic of various polymer compositions.

Again, bearing in mind the hereinabove criteria set forth for finding anticipation under 35 USC 102, the Applicants submit that all the elements of the presently claimed invention are not present. In Whitbourne, et al., the fluorocarbon as described in column 1, line 16, is a coating material. In this case, the fluorocarbon forms a substrate which can be medicated (i.e., soaked or otherwise filled with the medical material).

In contrast, the present invention concerns the fluorocarbon as the oxygen carrier which is intended to be supported within a substrate. Again, since all of the elements in the presently claimed invention are not taught or suggested by the Whitbourne, et al. reference, a rejection under 35 USC

102(b) is not sustainable. The Applicants respectfully request the Examiner to withdraw the rejection of claims under 35 USC 102(b) on the basis of the Whitbourne, et al. reference.

The Applicants acknowledge their obligation under 37 CFR 1.56 to point out the inventor and inventor dates of each claim and that all of the claims are commonly owned by the inventors.

Claims 1, 3, 7-8, 14, 19-24, and 28 have been rejected by the Examiner under 35 USC 103(a) as being unpatentable over White in view of U.S. 6,146,358 to Rowe. In this rejection, the Examiner states that White teaches all of the limitations of the claims except for explicitly reciting a balloon substrate or polymer including pores having sizes and the range of 20-200 microns. The Examiner concludes it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the composition as taught by White with the composition delivery device of Rowe for the well-known purpose of delivering the medical composition to a body surface as taught by White.

In response thereto, the Applicants point out that Rowe discloses a balloon catheter whereby a therapeutic agent with a carrier can be coated on the balloon. In this case, the carrier and therapeutic agent form the coating and no substrate is provided.

In contrast to the present invention, Rowe's disclosure and coating consist of a carrier and agent which is intended to be removed from the balloon at the site of treatment. The embodiment is described in claim 1 is further differentiated, whereby the agent is present in the form of microcapsules and

affixed to the balloon by means of a mesh expandable stent. In both cases, the disclosure of Rowe does not lead the present invention.

Specifically, the usage of a mesh stent does not imply the expert that a porous material with a predetermined pore size could be used.

Accordingly, the Applicants submit that the Examiner, in fact, has not made a prima facie case of obviousness on the basis of the White and Rowe references. Therefore, the Applicants respectfully request the Examiner to withdraw the rejection of the claims under 35 USC 103(b) on the basis of the White and Rowe references.

In view of the arguments hereinabove set forth, it is submitted that each of the claims now in the Application define patentable subject matter not anticipated by the art of record and not obvious to one skilled in this field who is aware of the references of record. Reconsideration and allowance are respectfully requested.

Respectfully submitted,



I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS
BEING DEPOSITED WITH THE U.S. POSTAL SERVICE
AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED
TO: COMMISSIONER OF PATENTS, PO BOX 1450
ALEXANDRIA, VIRGINIA 22313-1450, ON

Walter A. Hackler

Attorney of Record

Registration No. 27,792

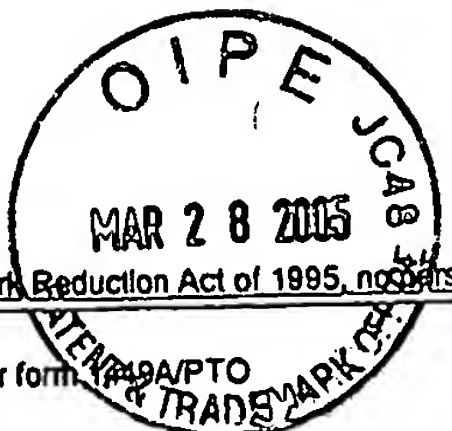
2372 S.E. Bristol Street, Suite B

Newport Beach, California 92660

(949) 851-5010

March 22, 2005
3/24/05
(DATE SIGNED)

WALTER A. HACKLER
REG. NO. 27,792



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449A/PTO
**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(use as many sheets as necessary)

Sheet 1 of 2

Complete if Known

Application Number	2869
Filing Date	JANUARY 3, 2002
First Named Inventor	DR. CHRISTOPH HEHRLEIN et al.
Art Unit	3736
Examiner Name	
Attorney Docket Number	2869

U.S. PATENT DOCUMENTS

Examiner Initials ¹	Cite No. ¹	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number	Kind Code ² (if known)			
[initials]		US- 3,958,014		05-18-1976	WATANABE et al.	
		US- 4,252,827		02-24-1981	YOKOYAMA et al.	
		US- 4,445,500		05-01-1984	JEWELL L. OSTERHOLM	
		US- 4,636,195		01-13-1987	HARVEY WOLINSKY	
		US- 4,795,423		01-03-1989	JEWELL L. OSTERHOM	
		US- 4,909,252		03-20-1990	JEFFREY GOLDBERGER	
		US- 4,944,745		07-31-1990	SOGARD et al.	
		US- 5,059,166		10-22-1991	FISCHELL et al.	
		US- 5,087,247		02-11-1992	HORN et al.	
		US- 5,199,939		04-06-1993	DAKE et al.	
		US- 5,951,458		09-14-1999	HASTINGS et al.	
		US- 6,048,332		04-11-2000	DUFFY et al.	
		US-				
		US-				

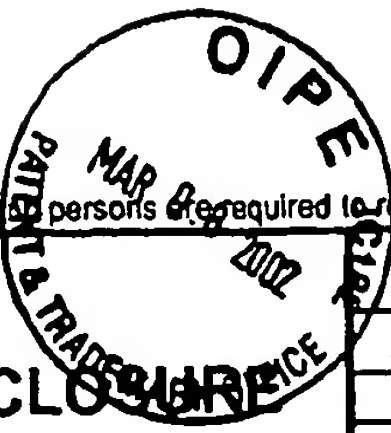
RECEIVED
MAR 11 2002
TO 3736 MAIL ROOM

FOREIGN PATENT DOCUMENTS

Examiner Initials ¹	Cite No. ¹	Foreign Patent Document			Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ³
		Office ³	Number ⁴	Kind ⁵ (if known)				
[initials]			WO 97/32626		09-12-1997	Scimed Life Systems, Inc.		

Examiner Signature	<i>[Signature]</i>	Date Considered	01/03/05
-----------------------	--------------------	--------------------	----------

*EXAMINER: Initial reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.
¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. Applicant is to place a check mark here if English language Translation is attached.



Under the Paperwork Reduction Act of 1995,

PTO/SB/08B (10-01)
Approved for use through 10/31/2002. OMB 0851-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Substitute for Form 1040-PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet

2

of

2

Complete if Known

Application Number	2869
Filing Date	JANUARY 3, 2002
First Named Inventor	DR. CHRISTOPH HEHRLEIN et al.
Group Art Unit	3736
Examiner Name	
Attorney Docket Number	2869

OTHER PRIOR ART – NON PATENT LITERATURE DOCUMENTS

[illegible]

**Examiner
Signature**

Date
Considered

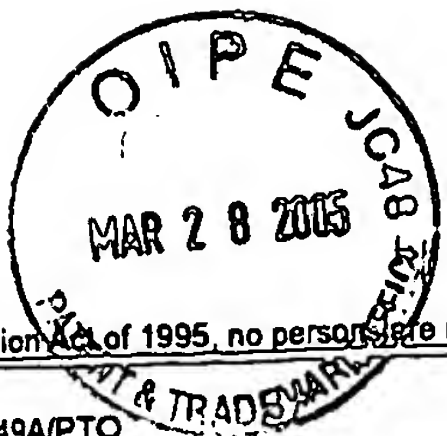
01/03/05

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Applicant's unique citation designation number (optional).

² Applicant is to place a check mark here if English language Translation is attached.

Burden Hour Statement: This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO:** Assistant Commissioner for Patents, Washington, DC 20231.



Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it contains a valid OMB control number.



Substitute for form 1449/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet 1 of 1

Complete if Known

Application Number	10/038,468
Filing Date	01/03/2002
First Named Inventor	CHRISTOPH HEHRLEIN
Art Unit	3736
Examiner Name	UNKNOWN
Attorney Docket Number	2869

U.S. PATENT DOCUMENTS

Examiner Initials ¹	Cite No. ¹	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number	Kind Code ² (if known)			
[Signature]		US- 4,366,169		12-28-1982	DAVID C. WHITE	
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				
		US-				

RECEIVED
OCT 01 2003
TECHNOLOGY CENTER R3700

FOREIGN PATENT DOCUMENTS

Examiner Initials ¹	Cite No. ¹	Foreign Patent Document			Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	Ts
		Office ³	Number ⁴	Kind ⁵ (if known)				
[Signature]		EP	0 372 088 A1		06-13-1990	SUMITOMO ELECTRIC		
		EP	0 112 658 A2		07-04-1984	CHILDREN'S HOSPITAL		

Examiner
Signature

[Signature]

Date
Considered

11/05/05

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. Applicant's unique citation designation number (optional). See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.